SINGLE BENCH

18/10/ (8)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition NO. 5506 /2005

PETITIONERS :1. Rajesh Puri, aged about 33 years
NON-APPLICANTS S/o. Late Goverdhan Puri

2. Firan Bai, aged about 55 years
Wd/o. Late Goverdhan Puri Goswami
Both R/o. Kududand, Opp. House of
Lov Singh, P.S. Civil Line, Tahsil
& District Bilaspur (C.G.)

P.R. No. 5594/05
Presented by Sri B.L. Dembey
dated 25/10/05

VERSUS

RESPONDENTS :1. Smt. Geetanjali,
APPLICANT Aged about 28 years
W/o. Rajesh Puri
R/o. Ashokpuri Goswami Nivas
Village Rawabhata, P.S. Khamtarai
Dist. Raipur (C.G.)

NON-APPLICANT 2. State of Chhattisgarh
NO.3

COMMISSIONER APARNA MALVIYA CC 1033/96 25/10/05 Bilaspur Chhattisgarh

WRIT PETITION U/A 227 OF THE CONSTITUTION OF INDIA

ON BEHALF OF THE PETITIONERS

(28)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

SINGLE BENCH : Hon'ble Shri S.R. NAYAK, CJ

WRIT PETITION NO. 5506 OF 2005

Rajesh Puri and another

Versus

Smt. Geetanjali and another

Present: Mr. B.L. Dembra, learned counsel for the petitioners.

Mr. N.K. Agrawal, Dy. Advocate General, with Mr. Sandeep Dubey, G.A., for the State of Chhattisgarh.

ORDER

(Passed on 21st of November 2005)

The following Order of the Court was passed by

S.R. Nayak, CJ:

This writ petition filed under Article 227 of the Constitution of India, if I may say so, is totally misconceived and unwarranted. In a petition filed by the respondent-wife under Sections 7 and 25 of the Guardian and Wards Act, 1890 (*for short 'the Act'*), the first petitioner herein who is the husband of the first respondent in his reply contended that the first respondent had already filed a petition under Section 25 of the Act before the Court of Sixth Civil Judge, Class-I, Raipur on 30/10/2002 and therefore the petition now filed under the same provision before the Family Court at Bilaspur suppressing institution of the earlier petition is not maintainable. When the matter stood thus, the Family Court at Bilaspur by its order

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dated 18/10/2005 directed the petitioners to produce the wards. Being aggrieved by the said direction, this writ petition is filed.

2. I have heard Mr. B.L. Dembra, learned counsel for the petitioners and perused the material papers appended to the writ petition.

3. It was contended by learned counsel for the petitioner that the learned Family Judge ought not to have directed the petitioners to produce the wards without deciding the application filed by the petitioners on 14/07/2005 with regard to the maintainability of the petition filed before the Family Court at Bilaspur and therefore, the impugned direction issued by the learned Family Judge dated 18/10/2005 is bad in law. The contention of the learned counsel is not acceptable to the Court. In the writ petition itself, in para 5.8, the petitioner himself has disclosed that in the reply to the interlocutory application filed by the petitioners dated 14/07/2005, the first respondent-wife has contended that she had no knowledge about the case alleged to be pending in Raipur Court. In other words, according to the first respondent, she did not institute the alleged petition under Section 25 of the Act before the Family Court at Raipur. Since the first respondent-wife has denied the assertion made by the husband, it is trite, the onus is on the petitioner-husband to prove that before filing the petition under Section 25 of the Act before the Family Court at Bilaspur, the first respondent-wife had instituted a petition before the Family Court at Raipur in the year 2002 and only in the event of the petitioner proving that fact the contention now advanced before the Court could be countenanced and not otherwise. Be that as it may, no exception could be taken to the order of the Family Court at Bilaspur dated 18/10/2005 directing the petitioner to produce the children before the

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Family Court for interacting with the children, which is absolutely necessary for decision-making under Section 25 of the Act inasmuch as the paramount consideration which should go into the decision-making by the Family Court is the interest of the wards and heavy responsibility is cast on the Family Court in that regard. The petition is devoid of merit. It is accordingly dismissed, however, with no costs.

Sd/-
Chief Justice

Subbu